IN THE SUPREME COURT OF IOWA

Supreme Court No. 15-1373
Johnson County Case No. EQCV075292
Johnson County Case No. CVCV075457

TSB HOLDINGS, L.L.C. and
911 N. GOVERNOR, L.L.C.,
Plaintiffs-Appellants,

vs.

CITY OF IOWA CITY, IOWA
Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF JOHNSON COUNTY
HONORABLE JUDGE MITCHELL E. TURNER

APPELLANTS' FINAL BRIEF

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II. Whether the District Court erred in determining that TSB's Petition failed to meet notice pleading requirements concerning its takings claim.

ROUTING STATEMENT

This case presents substantial constitutional questions regarding the validity of a statute, ordinance or court of administrative rule and therefore the Supreme Court retention of the case is appropriate. Iowa R. App. P. 6.1101(2)(a).

STATEMENT OF THE CASE

In Kempf v. City of Iowa City, the property owners successfully challenged the downzoning of their property and obtained an injunction prohibiting the City of Iowa City from interfering with construction of apartment buildings thereon by Kempf or his successors in interest. 402 N.W.2d 393, 401 (Iowa 1987). The current dispute centers around the City's efforts to circumvent this Court's injunction.

In 2012 and 2013, TSB, Kempf's successor in interest, sought to construct apartment buildings on the property as allowed by the Kempf injunction, and the City again downzoned it to prevent construction of apartment buildings thereon. (App. at pp. 12-22). Based on the downzoning, a city official, and subsequently the City's Board of Adjustment ("BOA"), denied TSB's site plan for the construction of the proposed apartment buildings on the property. (App. at pp. 129-133). The downzoning and denial of TSB's site plan led to three lawsuits. TSB filed a Declaratory Judgment action and a Certiorari action against the City captioned respectively TSB Holdings, LLC, et al. v. City of Iowa City, Johnson County case no. EQCV075292, and TSB Holdings, LLC, et al. v. City of Iowa City, Johnson County case no. CVCV075457 (collectively "the zoning cases") in which TSB challenged the validity and legality of

the downzoning as a violation of Kempf and alleged the downzoning constituted a taking. (App. at pp. 134-138; 160-162). TSB filed a Certiorari action against the City's Board of Adjustment ("BOA") captioned TSB Holdings, LLC, et al. v. Board of Adjustment for the City of Iowa City, Johnson County case no. CVCV076128 ("the BOA action") after denial of its site plans. (App. at pp. 163-164). The BOA action is not involved in this appeal and is still pending in Johnson County district court.

On March 20, 2015 the trial court held a hearing on numerous motions. Both TSB and the City filed Motions for Summary Judgment concerning the validity of the downzoning of the property. TSB also moved to consolidate the zoning cases with the BOA action and sought reconsideration of the trial court's previous ruling denying TSB's Motion to Amend its Petition in EQCV075292 to add a claim for declaratory relief. (App. at pp. 190-192). On June 3, 2015 the trial court ruled on all pending motions. The trial court granted the City's Motion for Summary Judgment "on all claims pled" in the zoning cases, overruled TSB's Motion for Summary Judgment and annulled the previously granted Writ of Certiorari. (App. at p. 181). As its ruling on the zoning cases resulted in their dismissal, the trial court denied TSB's

Motion to Consolidate them with the BOA action. Id. The trial court overruled TSB's Motion to Reconsider. Id. In response to the trial court's dismissal of "all claims pled," on June 15, 2015 TSB filed a Motion to Enlarge, Amend or Modify pursuant to Iowa R. Civ. P. 1.904(2) to seek clarification about whether the trial court intended to grant summary judgment on TSB's takings claim when it dismissed "all claims pled" and whether its ruling constituted a final order in the zoning cases. (App. at pp. 165-169). On July 14, 2015 the trial court entered a ruling in which it incorporated its June 3, 2015 order in its entirety and enlarged to state that it intended to dismiss TSB's takings claim because TSB's Petition in CVCV075457 did not meet notice pleading requirements. The trial court confirmed its dismissal of all claims pled in the zoning cases. (App. at p. 184). This appeal followed. Other relevant facts will be addressed below.

STATEMENT OF THE FACTS

The facts involved in this appeal are essentially undisputed, and the issues raised by these undisputed facts find their genesis in Kempf v. City of Iowa City, 402 N.W.2d 393 (Iowa 1987). In 1973, the Kempf plaintiffs ("Kempf") bought property ("the Property") in Iowa City,

Johnson County, Iowa with the intention of improving it with apartments. Id.; (App. at p. 67).[1] At the time of its purchase, the Property was zoned R3B, a classification that permitted high-density apartments and office buildings. Kempf built an office building on Lots 8 and 9 in 1974. In 1977, the City issued Kempf a building permit to construct a 29-unit apartment building on part of Lot 50. Almost immediately subsequent to its issuance, and at the behest of neighbors in the area, the City revoked the building permit and in 1978 downzoned the Property to prevent construction of apartment buildings thereon. Kempf initiated a lawsuit to challenge the revocation of the building permit and to recover damages for what Kempf believed to be a taking of the undeveloped parts of the Property. Kempf obtained injunctive relief to complete the 29-unit apartment building and trial proceeded on Kempf's takings claim. Kempf, 402 N.W.2d at 393–400.

After ten years of litigation, the Iowa Supreme Court held that the downzoning was essentially a taking of the undeveloped parts of the Property and was therefore arbitrary and unreasonable as applied

[1] The Property consists of six numbered lots, Lots 8–10 and 49–51. As this appeal involves distinct parts of the Property, where appropriate TSB will refer to the Property by its numerical designation, e.g. Lot 49, Lot 50, etc.

thereto. Kempf, 402 N.W.2d at 397. While the Court did not invalidate the 1978 downzoning, it granted Kempf the ability to complete his apartment construction plans "as shown on the record." Id. at 400–01. The Court held that once Kempf's construction plan was completed, any further development of the various parts of the Property would be subject to then-existing zoning ordinances governing the Property. Id. at 400–01. The case was remanded to the trial court. Id.

On August 21, 1987, the trial court, on remand, entered an order ("the Remand Order") preserving parts of the Property for construction of apartment buildings as mandated by the Supreme Court. The Remand Order provides in relevant part:

> The 1978 rezoning of the following undeveloped properties in Iowa City, Johnson County, Iowa, was unreasonable, arbitrary and capricious. [Legal descriptions for Lots 10, 49, 51 and Lot 50, except the south 186' thereof]...
>
> The owner or owners of said properties, and their successors and assigns, shall be permitted to develop these properties with multiple dwellings (apartments) in accordance with the provisions applicable to the R3B zone in effect on May 30, 1978... The City is and shall be enjoined from interfering with development of those properties as herein provided... Once a use has been developed or established on any of

> the above-described properties, further development or redevelopment of that property shall be subject to the zoning ordinances in effect at the time such development or redevelopment is undertaken...

(App. at pp. 292-94). Accordingly, the Remand Order enjoined the City from interfering with construction of apartment buildings on Lots 10, 49 and 51 in their entirety and Lot 50 except the south 186' thereof.

In 1988 Kempf applied for a building permit to construct a 12-unit apartment building on the Property and completed construction thereof in 1991. Pls' Exh. 1 of Pls' Stmnt S.J. at p. 157. The Property is currently improved with the 12- and 29-unit apartment buildings and the office building previously mentioned.

As it had in 1978, in 2012 the City amended its comprehensive plan in anticipation of downzoning Lots 8–10, Lot 49 and part of Lot 50 (excluding the 29-unit apartment building located on the south 186' of Lot 50) to classifications that either outlawed construction of apartment buildings or reduced the permissible number thereof such that further construction of apartments was prohibited. (App. at pp. 71-123). The City sought to downzone Lot 49 from R3B to RS-12, a zoning classification that does not permit apartment buildings. (App. at p. 88).

The City sought to downzone the part of Lot 50 subject to the Remand Order from R3B to RM-20; while RM-20 zoning allows apartment buildings, the practical effect, as intended by the City, was that no more apartments could be built on Lot 50, as the existing 29- and 12-unit buildings "used up" the entirety thereof for density calculation purposes. (App. at p 87; 96). The City sought to downzone Lots 8–10 from CO-1 to RS12.[2] (App. at p. 87-89).

On January 22, 2013 the City set a public hearing on its proposed downzoning of the Property.[3] Return of Writ; Case No. CVCV075457 at pp. 30–37. The City passed ordinance 13-4518 effective March 28, 2013. Id. at 185. During the downzoning process, however, beginning in early January, 2013, TSB submitted site plans to the City in anticipation of receiving building permits for construction of apartment buildings. On January 23 and 31, 2013, TSB submitted revised site plans which showed one 24-unit apartment building on each of the Lots 10, 49 and 51, all of which were protected for construction of apartments by the Remand Order. (App. at pp. 126-128). On February 7, 2013 Julie

[2] The downzoning of Lots 8 and 9, where the office building stands, is not at issue as Lots 8 and 9 are not subject to the Remand Order.
[3] Under City ordinances, the setting of a public hearing on rezoning prohibits approval of site plans or issuance of building permits unless construction complies with the proposed rezoning.

Tallman, a city zoning official, denied them. Tallman's denial letter states: "...multi-family dwellings are not allowed in either the existing zoning or the proposed zoning. The existing CO-1 zone does not allow multi-family dwellings unless they are above a commercial use. The proposed RS-12 zone does not allow multi-family dwellings." (App. at p. 129).[4] TSB filed another site plan on April 18, 2013 which the City determined to be essentially the same as the January 23rd and 31st plans and therefore denied it for the same reasons. (App. at p. 130). TSB appealed the denial of its site plan to the BOA as required by city ordinances. During the appeal TSB argued before the BOA that the ruling in Kempf controlled how TSB may develop its property instead of any existing or proposed zoning. (App. at pp. 30-66). During the BOA appeal process city staff argued, however, that the BOA did not have the authority to determine whether Kempf applied to the Property and stated that this question was the subject of other litigation (the zoning

[4] At the time of the January 23rd and 31st plan submissions, the City's moratorium was in effect, which meant any construction had to comply with the proposed downzoning. TSB's January 23rd and 31st plans showed buildings on Lots 10 and 49, both of which the City proposed to downzone to RS-12. Plaintiffs' Exhibit 1 at 219–21.

cases). Id.[5] The BOA affirmed the City's decision on December 13, 2013. As advocated by the City, the BOA concluded it was without authority to determine whether Kempf governed the development of the Property and that TSB's proposed apartment buildings were not permitted in RS-12 zones. (App. at pp. 131-33). Id. The denial of TSB's site plan is the subject of a separate lawsuit (the BOA action).[6]

Prior to the effective date of the ordinance 13-4518, TSB filed its Petition for Declaratory Judgment in equity (EQCV075292) against the City in which it alleged that: 1) the Property's zoning classification for Lots 10 and 49–51 was established as R3B by Kempf; 2) TSB submitted site plans to obtain a building permit for construction of apartment buildings consistent with Kempf; and 3) the City denied TSB's site plans. (App. at pp. 134-38). TSB asked that the trial court declare that the City may not rezone the Property, and that if it does, the rezoning as applied

[5] TSB mentions the City's position argued to the BOA because as shown later herein, after arguing to the BOA that it (the BOA) lacked authority to consider TSB's Kempf argument, the City, in this action, then claimed that the BOA action was the forum to litigate whether TSB had development rights under Kempf as a reason for upholding the validity of its downzoning ordinance.

[6] TSB v. Iowa City Board of Adjustment, Johnson County Case No. CVCV076128. TSB asked the trial court to take judicial notice of Johnson County case no. CVCV076128 and, as the pleadings show, the zoning cases and the BOA action were essentially consolidated until June 3, 2015.

to the Property would be unconstitutional and void.[7] Id. TSB also sought "such other relief as the Court deems just and equitable." Id. After the effective date of the downzoning TSB filed a Petition for Writ of Certiorari (CVCV075457) in which the factual allegations were similar to those in EQCV075292 but claimed that the downzoning was improper, unreasonable, arbitrary, capricious, illegal, contrary to prior rulings of the Supreme Court of Iowa and would result in an unconstitutional taking of TSB's Property. (App. at pp. 160-62). TSB asked that a Writ of Certiorari issue, and that after hearing, the downzoning be declared null and void. (App. at p. 162). TSB prayed for such other relief as the Court deems just and equitable in the premises. Id. While TSB's Petition in CVCV075457 alleged that the downzoning would result in an unconstitutional taking, TSB's prayer for relief did not specifically request damages for the alleged taking.[8] EQCV075292 and CVCV075457 (the zoning cases) were consolidated by court order dated July 16, 2014.

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[7] TSB sought a temporary injunction to stop the rezoning but this request for relief was withdrawn.

[8] TSB mentions that the specifics of its pleadings as one of the issues on appeal is whether its Petition in CVCV075457 meets notice pleading requirements concerning the takings claim, as the City contends TSB never alleged a takings claim. March 20, 2015 Tr. p. 14, 26.

The trial court heard numerous motions on March 20, 2015. TSB filed a Motion to Consolidate the zoning cases with the BOA action and a Motion to Reconsider the trial court's previous denial of TSB's Motion to Amend its Petition in EQCV075292 to add a count for declaratory relief. Pls' Motion to Consolidate; Pls' Motion to Reconsider. More significantly, however, both the City and TSB filed Motions for Summary Judgment concerning the legality and validity of the ordinance 13-4518. TSB claimed that ordinance 13-4518 violated the Remand Order's injunction, as a matter of law, as it was the undisputed reason the City's zoning official and its BOA denied TSB's site plans for construction of apartment buildings on parts of the Property protected therefor by the Remand Order. City's August 8, 2014 Response to TSB's Statement of Undisputed Material Facts ¶ 12 ("...The stated reason for the denial of Plaintiffs' site plan was that multi-family did not comply with either the existing zoning or the proposed zoning." The City argued that ordinance 13-4518 was properly enacted, was a reasonable exercise of the police power, and was therefore valid as a matter of law. The City asserted that TSB's true complaint was with the BOA's denial of TSB's site plan and not with ordinance 13-4518, and that the BOA's actions were the subject of a separate lawsuit (the BOA action). See, e.g., Def's Brief in

Support of Resistance to Pls' Motion for S. J. filed August 8, 2014 at p. 3. The City argued that the appropriate forum to litigate whether TSB retained any development rights from Kempf was in the BOA action.[9] According to the City, interference with Kempf's plan, if any, was committed by the BOA, and therefore summary judgment on the validity of ordinance 13-4518 was appropriate. The City also argued that TSB never made a takings claim and it sought summary judgment "on all claims pled" in the zoning cases. The City also resisted TSB's Motion to Consolidate and Motion to Reconsider.

On June 3, 2015 the trial court entered a ruling sustaining the City's Motion for Summary Judgment and denying that of TSB. The trial court concluded that ordinance 13-4518 was not a violation of the Kempf rulings. (App. at p. 180). The trial court found significance in the fact that the original Kempf decision permitted the 1978 downzoning to apply subject to Kempf's right to complete his plan. Id. The trial court concluded that to prohibit the City from rezoning the Property would prevent it from faithfully performing its zoning powers. Id. The trial court noted, as TSB conceded, that the ordinance was adopted

[9] See n. 5 where the City argued that the BOA did not have authority to determine whether Kempf applied to the Property.

procedurally correctly. Id. The trial court stated that the issues of whether TSB had any vested rights in Kempf's plans, and whether the BOA acted illegally, were not relevant to the legality of the downzoning. (App. at p. 181). The trial court annulled the previously granted Writ of Certiorari and granted the City's Motion for Summary Judgment "on all claims pled" by TSB in EQCV075292 and CVCV075457 (the zoning cases). Id.

On June 15, 2015 TSB filed a Motion to Enlarge, Amend or Modify to seek clarification of the trial court's June 3, 2015 ruling. TSB sought clarification as to whether the trial court intended to dismiss TSB's takings claims and whether its ruling constituted a final order in the zoning cases. (App. at pp. 165-69). TSB drew the trial court's attention to its June 3, 2015 ruling in which the trial court itself noted that TSB's Petition in CVCV075457 alleged, among other things, that the downzoning would result in an unconstitutional taking of TSB's Property. (App. at pp. 166-67). In its Resistance the City argued that since TSB never mentioned damages or diminution in value of the Property that the takings claim was either not raised or was not property pled. Def's Res. to Pls' Motion to Enlarge filed June 25, 2015. TSB responded and argued that the taking allegation, even absent a

separate request for damages therefor, was sufficient to meet notice pleading requirements. TSB argued that the relevant inquiry was whether its Petition gave notice of the incident giving rise to the claim and a general nature of the claim. Pls' Reply of July 9, 2015. TSB pointed out numerous documents in the Return of Writ in CVCV075457 showing where TSB informed the City of a potential takings claim. Id. The trial court, however, agreed with the City. On July 14, 2015 the trial court incorporated its June 3, 2015 by reference and enlarged the ruling to clarify that it did intend to dismiss TSB's takings claim, stating that TSB "made mere mention" of an unconstitutional taking in its petition but "did not clearly state any separate takings claim or claim for damages." (App. at pp. 183-86). The trial court also clarified that its ruling was final in the zoning cases. TSB filed a timely Notice of Appeal.

SUMMARY OF ARGUMENT

TSB believes that the validity and legality of ordinance 13-4518 should be determined on summary judgment. TSB conceded and concedes that ordinance 13-4518 was procedurally appropriately passed. TSB did not and does not contend, nor does it request, that the City be permanently enjoined from rezoning the Property; the language of the Remand Order itself belies such an argument. (App. at pp. 292-

94) (discussing future development being subject to future ordinances). TSB contends, however, that the Remand Order enjoins the City from interfering with construction of apartment buildings on specific parts of the Property. TSB contends that the interference in this case took the form of a zoning ordinance, ordinance 13-4518, and the undisputed facts show that ordinance 13-4518 was the root cause of the denial of TSB's site plans for construction of apartment buildings that were otherwise permissible under the Remand Order. TSB is entitled to Summary Judgment on its challenge to ordinance 13-4518 and the trial court erred in concluding otherwise.

The trial court erred in concluding that TSB's Petition in CVCV075457 failed to meet notice pleading requirements because it did not "clearly state a separate takings claim or claim for damages." To meet notice pleading requirements TSB's Petition need only apprise the City of the incident giving rise to the claim and the general nature of the action. TSB's Petition met this low threshold, and the trial court erred in granting summary judgment on TSB's takings claim.

ARGUMENT

I. THE TRIAL COURT ERRED IN GRANTING THE CITY'S MOTION FOR SUMMARY JUDGMENT AND DENYING THAT OF TSB AS ORDINANCE 13-4518 VIOLATES THE REMAND ORDER'S INJUNCTION AS A MATTER OF LAW.

A. Preservation of Error: The trial court erred in granting the City's Motion for Summary Judgment and denying that of TSB. This issue was raised throughout TSB's Motion to Reconsider, in its Motion for Summary Judgment and Resistance to Defendant's Motion for Summary Judgment, at the hearing on March 20, 2015, and was raised before the Honorable Judge Turner in his decisions and rulings on June 3, 2015 and July 14, 2015 and was raised properly in the Notice of Appeal and Combined Certificate filed herein.

B. Standard of Review: The Supreme Court reviews the granting of summary judgment for correction of errors at law. Rathje v. Mercy Hosp., 745 N.W.2d 443, 447 (Iowa 2008).

C. Argument: TSB believes that the validity of ordinance 13-4518 can be adjudicated on summary judgment and the starting point for the analysis of its validity is the Remand Order. It provides in relevant part:

> the owner or owners of said properties, or their successors and assigns, shall be permitted to develop

> those properties with multiple dwellings (apartments) in accordance with the provisions applicable to the R3B zone in effect on May 30, 1978...The City shall be enjoined from interfering with development of those properties as herein provided.....

(App. at p. 292). The City itself approved of this language. (App. at p. 293). The Remand Order undisputedly applies to Lots 10, 49 and 51 and enjoins the City from interfering with construction of apartment buildings thereon. (App. at pp. 292-93). The Remand Order is a court-imposed injunction. Injunctions, when entered, are read broadly to fulfill their intent. Bear v. Iowa Dist. Court, Tama Cnty., 540 N.W.2d 439, 441 (Iowa 1995) (stating that the Court considers the spirit as well as the letter of the injunction to determine if its intent has been fairly and honestly obeyed). Courts will not allow violations of injunctions "by any device or subterfuge, even by public officials..." See Carr v. Dist. Court, Van Buren Cnty., 126 N.W. 791, 794 (Iowa 1910). The mere passage of time does not invalidate a permanent injunction. Bear, 540 N.W.2d at 441 (citations omitted). The court that rendered the injunction may modify or vacate the injunction if, over time, there has been a substantial change in circumstances in the facts or law. Id. (citations omitted). However, until stayed or set aside, an injunction must be obeyed. Id. Even erroneous, improvidently granted or irregularly

obtained injunctions must be obeyed until modified or dissolved. See Opat v. Ludeking, 666 N.W.2d 597, 607 (Iowa 2003) (citations omitted); In re Inspection of Titan Tire, 637 N.W.2d 135, 142 (Iowa 2001) (noting that disagreeing with court order does not excuse failing to comply with it); Hatlestad v. Hardin Cnty. Dist. Court, et al., 114 N.W. 628, 630 (Iowa 1908) (stating that an injunction entered with proper jurisdiction, until set aside by motion or reversed on appeal or by other proper proceedings, must be respected).

The City's actions should be analyzed against this background. The Remand Order was in effect when the City enacted ordinance 13-4518 when TSB submitted its site plans and when both the City zoning official and its BOA denied them. When the City passed ordinance 13-4518 it was aware of the Kempf rulings. (App. at pp. 10-11). The Remand Order protects Lots 10, 49 and 51 for construction of apartment buildings. (App. at pp. 68-70). These site plans were denied by a city zoning official because of ordinance 13-4518. (App. at pp. 129-130). The BOA affirmed the zoning official's denial of TSB's site plans based on ordinance 13-4518. (App. at pp. 131-133).

The purely legal question before the Court, based on these undisputed facts, is whether the passing of ordinance 13-4518, which

was the undisputed reason for denial of TSB's site plans by both the city zoning official and its BOA, violates the injunction prohibiting the City from interfering with development of the Property as a matter of law. TSB contends it does. While the injunction in the Remand Order does not specifically prohibit rezoning of the Property, it does prohibit interference with development. If injunctions are to be read broadly to fulfill their intent, see Bear, 540 N.W.2d at 441, the City's passing of ordinance 13-4518 violates the Remand Order's injunction and the ordinance should be declared a nullity.

The City argued, and the trial court agreed, that the passing of ordinance 13-4518 was not the source of any alleged illegality. See Trial Court Ruling ("...whether Plaintiffs have a vested right in Kempf's plans, the notice of those vested rights, and any alleged illegalities done by the Board of Adjustment are not relevant to the present matters challenging the City's approval of Ordinance 13-4518..."). (App. at p. 181). The trial court found TSB's alleged undisputed facts to be immaterial to the validity of ordinance 13-4518. (App. at p. 181).. TSB respectfully suggests the cart appears to be ahead of the horse. As the record stands, neither the zoning official who initially denied TSB's site plans based on ordinance 13-4518, nor the BOA which affirmed the zoning official for

the same reason, could have done so without the passage of ordinance 13-4518. In tort terms, ordinance 13-4518 was the proximate cause of TSB's site plan denial. It was the City staff itself that argued before the BOA that neither the zoning officer nor the BOA had the authority to consider anything other than the applicable zoning ordinance in evaluating TSB's site plan. (App. at pp. 24-66). TSB agrees that a Board of Adjustment typically does not have authority to delve into property zoning issues. See Boomhower v. Cerro Gordo Bd. of Adjustment, 163 N.W.2d 75, 77 (Iowa 1968) (stating that applicable statutes do not grant a board of adjustment authority to sit in appellate review of adoption or amendment of zoning ordinances by a board of supervisors). It seems difficult to fathom that if an alleged illegality occurred, it was committed by a board (the BOA) that was without authority to address what allegedly caused it to act illegally (ordinance 13-4518). It is equally difficult to fathom that the impact on the Property itself resulting from the passage of ordinance 13-4518 (the denial of TSB's site plans) is irrelevant in determining whether ordinance 13-4518 is legal. Yet this is the exact result of the trial court's ruling. The above analysis demonstrates that the illegality stems not from the BOA's denial of

TSB's site plan but from the passage of ordinance 13-4518 which served as the reason for the denial of TSB's site plan.

Illegality exists where a party acts arbitrarily or unreasonably, the party's actions are in excess of authority, such actions are contrary to statute or they are not supported by the facts. Bontrager Auto Serv. v. Iowa City Bd. of Adjustment, 748 N.W.2d 483, 491 (Iowa 2008). There exists a court order (the Remand Order) enjoining the City from interfering with development of the property with apartment buildings. (App. at pp. 68-70). TSB respectfully suggests that actions taken in violation of a court order are without authority and are arbitrary and capricious and constitute an illegality for certiorari purposes. Additionally, actions taken in violation of an injunction are void. See Northwestern Mut. Life Ass'n v. Hahn, 713 N.W.2d 709, 712 (Iowa Ct. App. 2006) (holding that change in beneficiary designation form made in violation of temporary injunction should be set aside). The City's passing of ordinance 13-4518 was illegal as a matter of law, and the trial court erred in granting the City's Motion for Summary Judgment and denying that of TSB.

II. THE TRIAL COURT ERRED IN DETERMINING THAT TSB'S PETITION IN CVCV075457 FAILED TO MEET NOTICE PLEADING REQUIREMENTS CONCERNING ITS TAKINGS CLAIM.

A. Preservation of Error: The trial court erred in determining that TSB's Petition failed to meet notice pleading requirements concerning its takings claim. This issue was raised in TSB's Motion to Reconsider, Motion for Summary Judgment, and Resistance to Defendant's Motion for Summary Judgment, and was raised before the Honorable Judge Turner in his decisions and rulings on June 3, 2015 and July 14, 2015 and was raised properly in the Notice of Appeal and Combined Certificate filed herein.

B. Standard of Review: The Supreme Court reviews the grant of summary judgment for correction of errors at law. Rathje, 745 N.W.2d at 447.

C. Argument: In its June 3, 2015 ruling, the trial court noted TSB's allegation in CVCV075457 that downzoning of the property would result in an unconstitutional taking. (App. at pp. 170-71) The trial court nevertheless granted summary judgment to the City "on all claims pled in the above-captioned EQCV075292 and CVCV075457..." (App. at p.

181).[10] In response to TSB's Motion to Enlarge, Modify or Amend, the trial court stated that it intended to dismiss TSB's takings claim. The trial court stated that since TSB "made mere mention of an unconstitutional taking in their petition and did not clearly state any separate takings claim or claim for damages," TSB failed to meet notice pleading requirements therefor. (App. at p. 184). The trial court's ruling in this regard is erroneous.

Iowa is a notice pleading state. Under notice pleading, a party is not required to plead or identify specific legal theories of recovery or even allege ultimate facts supporting a claim. Am. Family Mut. Ins. Co. v. Allied Mut. Ins. Co., 562 N.W.2d 159, 163 (Iowa 1997). A petition need only give a defendant "fair notice of a claim asserted so a defendant can adequately respond." Id. Moreover, in addition to alleging that the passing of ordinance 13-4518 would result in an unconstitutional taking of its property, TSB's Petition in CVCV075457 contains a prayer for general equitable relief. (App. at p. 162). ("Plaintiff prays that [sic] for such further relief as the court deems just and equitable in the premises."). Such a prayer is liberally construed and will often justify

[10] The language used by the trial court comes directly from the City's proposed ruling submitted to the trial court on Friday, April 17, 2015.

granting relief in addition to the relief contained in the specific prayer, provided it fairly conforms to the case made by the petition and the evidence. Lee v. State, 844 N.W.2d 668, 679 (Iowa 2014).

The issue before the trial court was whether TSB's Petition provided the City notice of the incident giving rise to its takings claim and the general nature thereof. The admitted failure of the Petition in CVCV075457 to have a separate takings claim or claim for damages is not fatal. A pleader need not even identify specific legal theories in a petition. Cemen Tech. v. Three D. Indus., LLC, 753 N.W.2d 1, 12 (Iowa 2008) (citing Roush v. Mahaska State Bank, 605 N.W.2d 6, 10 (Iowa 2000)). American Family is instructive. See 562 N.W.2d at 159. In American Family, American Family Insurance brought a declaratory judgment action for indemnity against Allied Insurance Company for payments made in connection with settling a claim. Id. Allied moved for and obtained summary judgment on American Family's indemnity claim based on American Family's pleading only an indemnity claim and its failure to plead a claim for contribution. Id. at 163. The Supreme Court reversed the district court's grant of summary judgment and concluded that American Family's petition met notice pleading requirements. Id. The Court stated that a petition gives fair notice if it informs the

defendant of the incident giving rise to the claim and the claim's general nature. Id. (Citations omitted.)

The American Family Court held that a petition met notice pleading requirements for a contribution claim even though the term "contribution" did not appear in the petition. American Family, 562 N.W.2d at 163. If there was no separate contribution claim in American Family's petition, then there also was no separate claim for damages related thereto. Id. Yet, the Court held that American Family's petition met notice pleading requirements and the trial court's grant of summary judgment on its unpled contribution claim was reversed. Id. If the petition in American Family met notice pleading requirements when the cause of action was not identified, TSB's Petition meets notice pleading requirements. TSB's Petition, which pleads the zoning and calls the rezoning an unconstitutional taking of TSB's property, puts the City on notice of the facts giving rise to the claim and its general nature. The City had notice of such a claim all along and has never contended otherwise. Pls' Exh. A to Pls' Motion to Enlarge, Modify or Amend; ("[i]f the property is downzoned, it will result in a substantial decrease in value of the property, and likely a claim for damages against the City."); Return of Writ and Verification of CVCV075457 at p. 10 ("Greenwood-

Hektoen said a takings claims is defensible...); Id. at 84 (Barkalow letter mentioning regulatory taking); Id. at 180 (Larson letter to council) ("Finally, if the proposed Ordinance is approved and goes into effect, my clients will have a very strong case for inverse condemnation"). See Rick v. Boegel, 205 N.W.2d 713, 715 (Iowa 1973) ("When the Petition is not attacked until after the answer, the Petition will be liberally construed in favor of Plaintiff so as to effectuate justice, and pleader will be given advantage of every reasonable intendment (citations omitted))". Given the allegations in TSB's Petition, the applicable liberal pleading rules and the American Family holding, the trial court erred in concluding that TSB's Petition did not meet notice pleading requirements. The trial court's ruling should be reversed and trial set on TSB's takings claim.

SUMMARY

The trial court erred in granting the City's Motion for Summary Judgment and denying that of TSB. The undisputed facts show that ordinance 13-4518 violates the Remand Order's injunction against the City prohibiting it from interfering with development. This Court should reverse the trial court and enter an order granting TSB's Motion for Summary Judgment and invalidate ordinance 13-4518 in its entirety.

The trial court erred in granting summary judgment on TSB's takings claim. TSB's Petition in CVCV075457 met the minimal notice pleading requirements for stating a claim. This Court should reverse the trial court's ruling in this regard and direct that TSB's takings claim be set for trial.

CONCLUSION

TSB asks that this Court reverse the trial court's granting of the City's Motion for Summary Judgment and the trial court's denial of that of TSB and invalidate ordinance 13-4518. TSB also asks that this Court reverse the trial court's dismissal of its takings claim and remand this action for trial thereon.

REQUEST FOR ORAL ARGUMENT

Notice is hereby given that Appellant requests oral argument on this matter.

Respectfully submitted,

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ATTORNEY'S COST CERTIFICATE

I certify that the actual cost of reproducing the necessary copies of Plaintiff-Appellant's Proof Brief consisting of 30 pages was in the sum of $0.00.

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

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Dated this 8th day of February, 2016.

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PROOF OF SERVICE AND CERTIFICATE OF FILING

I, Charles A. Meardon, certify that on February 8, 2016, I served this document by filing an electronic copy of this document with the Electronic Document Management System to all registered filers for this case. A review of the filers in this matter indicates that all necessary parties have been and will be served in full compliance with the provisions of the Rules of Appellate Procedure.

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